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Trifecta and Covid-Related Lawsuits

COVID-19 is not a simple virus, and legal nurse consultants play a pivotal role in helping attorneys understand the complexities of the virus and how it impacted the health of their clients. Our role is to educate an attorney on the legalities of the medical part of their case so that they can position themselves for this evolving litigation.

COVID-19 has touched various types of plaintiff and defense lawsuits that have been filed since the strange, alternate universe called the global pandemic. But from a medico-legal perspective, COVID-19 litigation is not that straightforward. For example, a breach of duty indicates that the defendant failed to act reasonably and prudently and adhere to recognized standards of care. But what if no recognized standards of care existed at the time of the incident because standards were evolving in real-time with the new disease? For example, in March 2020 the standard of care was to place a patient immediately on a ventilator for respiratory support but by April 2020 the standard had changed because premature ventilator use contributed to a higher death rate. If attorneys do not understand the medical intricacies and when the date of the incident fell on the rapidly changing COVID-19 timeline, they can miss important aspects and lose their case.

For a plaintiff attorney, COVID-19 has opened the door to a myriad of negligence cases involving negligent staffing and administration of infection control, lack of preparedness (PPE, medical equipment, screening, training for personnel), or failure to diagnose and treat a COVID-19 patient in a timely manner.

But a defense attorney now has a host of newly evolving defense strategies that help "muddy the waters"... ie: lack of recognized standards of care, adherence to "crisis" standards of care, the causation defense that pre-existing conditions or comorbidities contributed to damages, or comparative/contributory negligence because the plaintiff delayed treatment. In some cases, damages could even be an "acceptable complication" of treatment that was necessary to save a plaintiff's life.

As legal nurse consultants, it's imperative that we address both the allegations and defenses whether we are consulting for the plaintiff or the defense.

For an attorney, it's crucial that they use our Trifecta Team to unwrap the medical complexities and timelines of COVID-19 so that they can think like the opposing side in order to assure their litigation success.